

No. 15115

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United States  
Court of Appeals  
for the Ninth Circuit

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RALPH O. HUTCHENS,

Appellant,

vs.

LOUIS B. FAAS, LEONARD FAAS, WALTER  
FAAS, RUDOLPH FAAS, Individually and as  
Partners, Doing Business as King O'Lawn  
Mfg. Co., and KING O'LAWN MFG. CO., a  
Corporation,

Appellees.

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Transcript of Record

In Two Volumes

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Volume I

(Pages 1 to 80)

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PAUL P. O'BRIEN, C

Appeal from the United States District Court for the  
Southern District of California,  
Central Division.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

WILLIAM C. BABCOCK,  
1203 Heartwell Building,  
19 Pine Avenue,  
Long Beach 2, California.

For Appellees:

LYON & LYON,  
811 West Seventh Street,  
Los Angeles 17, California.





In the District Court of the United States, Southern  
District of California, Central Division

Civil Action No. 18564-WM

RALPH O. HUTCHENS,

Plaintiff,

vs.

LOUIS B. FAAS; LEONARD FAAS; WALTER  
FAAS; RUDOLPH FAAS; Individually and  
as Partners, Doing Business as KING O'LAWN  
MFG. CO.; KING O'LAWN, INC., a Califor-  
nia Corporation; JANE DOES ONE to TEN,  
Inclusive; JOHN DOES ONE to THIRTY,  
Inclusive; DOE CORPORATIONS ONE to  
TWENTY, Inclusive; ROE COMPANIES,  
PARTNERSHIPS ONE to TWENTY, In-  
clusive,

Defendants.

### REQUEST FOR ADMISSION OF FACTS

To Lyon & Lyon, 811 West Seventh Street, Los An-  
geles 17, California, Attorneys for Defendants,  
Louis B. Faas, Leonard Faas, Walter Faas,  
Individually and as Partners, Doing Business  
as King O'Lawn Mfg. Co., and King O'Lawn,  
Inc., a California Corporation:

Please take notice that the plaintiff hereby re-  
quests the defendants, pursuant to Rule 36 of the  
Federal Rules of Civil Procedure, to admit within  
ten (10) days after service of this request, for the

purposes of the above-entitled action only, and [2\*] subject to all pertinent objections to admissibility which may be interposed at the trial, the truth of the following facts:

1. That the attached advertising piece identified as Exhibit A was printed with the permission of defendants,

- (a) King O'Lawn Manufacturing Company,
- (b) King O'Lawn, Inc.

2. That said Exhibit A contains four illustrations of lawn edgers and trimmers identified as,

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model.

3. That since October 4, 1955, defendants King O'Lawn Manufacturing Company or King O'Lawn, Inc., hereinafter referred to jointly as King O'Lawn, have manufactured lawn trimmers and edgers of the structure shown in said Exhibit A and identified as,

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model.

4. That since October 4, 1955, defendants King O'Lawn have sold lawn trimmers and edgers of

the structure shown in said Exhibit A and identified as,

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model.

5. That said illustrations of,

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model, [3]

in said Exhibit A depict a lawn edger and trimmer having an engine-supporting base mounted on wheels, which base can be angularly adjusted relative to the surface on which said wheels rest.

6. That said illustrations of ,

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model,

in said Exhibit A depict a lawn edger and trimmer having a rigid rotatable cutting member that can be driven at a desired constant speed, and at a speed that is independent of the rate at which the lawn trimmer and edger is manually moved by the upwardly and rearwardly extending handle forming a part of the device.

## 7. That said illustrations of

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior **Model**,

in said Exhibit A show an elongate member extending forwardly from one side of the engine-supporting base with said member being so mounted on said base that said base and member are concurrently adjustable in angular relationship to the surface on which the supporting wheels of said base rest.

## 8. That said illustrations of

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model,

in said Exhibit A show an elongate member extending forwardly from one side of the engine-supporting base, which member rotatably supports a rigid cutter adjacent the forward end thereof.

## 9. That the rotatable cutter shown in said illustrations of, [4]

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model,

in said Exhibit A can enter an area for trimming and edging purposes which is too small to accommodate the engine-supporting base of the device.

10. That the rotatable cutter shown in said illustrations of

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model,

in Exhibit A can be driven at a desired constant speed when disposed in an area too small to accommodate the engine-supporting base of the device.

11. That the rotatable cutter shown in said illustrations of

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model,

in Exhibit A can be driven at a desired constant speed when disposed in a vertical or horizontal position, or a position there-between.

Dated: December 2, 1955.

WILLIAM C. BABCOCK,

FREDERICK E. MUELLER,

By /s/ WILLIAM C. BABCOCK,

Attorneys for Plaintiff.

Affidavit of service by mail attached.

[Endorsed]: Filed December 5, 1955.

[Title of District Court and Cause.]

PLAINTIFF'S INTERROGATORIES  
TO DEFENDANTS

To Lyon & Lyon, 811 West Seventh Street, Los Angeles 17, California, Attorneys for Defendants, Louis B. Faas, Leonard Faas, Walter Faas, Individually and as Partners, Doing Business as King O'Lawn Mfg. Co., and King O'Lawn, Inc., a California Corporation:

The plaintiff requests that each of the defendants named above answer under oath in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. Have either of the defendants, King O'Lawn Mfg. Co., or King O'Lawn, Inc., hereinafter referred to jointly as King O'Lawn, [8] authorized the printing of the advertising piece attached hereto and identified as Exhibit A?

2. Have either of the defendants King O'Lawn since October 4, 1955, manufactured lawn edgers and trimmers as shown in said Exhibit A that are titled therein as

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model?

3. Have either of the defendants King O'Lawn since October 4, 1955, sold lawn edgers and trimmers



as shown in said Exhibit A that are titled therein as

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model?

4. Does said advertising piece, Exhibit A, depict a portion of the externally viewable structure of models

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model,

as manufactured by the defendants King O'Lawn since October 4, 1955?

5. If the answer to any one of the Interrogatories 4(a), 4(b), 4(c), or 4(d) is negative, what are the differences in structure of the edger manufactured from that shown in said Exhibit A?

6. Does said advertising piece, Exhibit A, depict a portion of the externally viewable structure of models

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model, [9]
- (d) Senior Model,

sold by the defendants King O'Lawn since October 4, 1955?

7. If the answer to any one of the Interrogatories 6(a), 6(b), 6(c), or 6(d) is negative, state the differences in structure of the edger sold from that shown in said Exhibit A.

8. On what date was said

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model

first sold by the defendants King O'Lawn?

9. On what date was said

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model

first manufactured by the defendants King O'Lawn?

10. Does the

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model

as shown in said Exhibit A include an engine adapted to drive a rotating cutter at a constant speed, irrespective of the rate at which the edger is manually moved over the ground?



11. Does the

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model

as shown in said Exhibit A include a wheel-supported base on which an engine is mounted, which base may be angularly adjusted relative to the surface on which said wheels rest?

12. Can the rotating cutter of the

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model

be inserted for trimming or edging purposes into an area that is too small for the engine-supporting portion of the device to enter?

13. If the answer to Interrogatories 12(a), 12(b), 12(c), or 12(d) is in the affirmative, can the cutter be driven at a substantially constant speed?

14. If the answer to Interrogatories 12(a), 12(b), 12(c), or 12(d) is in the affirmative, can the cutter be driven at a substantially constant speed when the engine-supporting portion of the device is stationary?

15. At the trial hearing will defendants contend that any one of the patents listed in Paragraph IX

of their Answer to plaintiff's Amended Complaint discloses a device having an engine-driven rotatable cutter, which cutter can be driven at a substantially constant speed when disposed in an area too small for the engine-supporting portion of the device to enter?

16. If the answer to Interrogatory No. 15 is in the affirmative, state which of the patents will be relied upon as disclosing a device capable of so operating.

17. Will defendants contend at the trial that any one of them, more than one year prior to March 14, 1949, the filing date of the application which resulted in Letters Patent No. 2,618,919,

- (a) made,
- (b) used,
- (c) sold,

a device as defined in at least one claim of said patent? [11]

18. If the answer to Interrogatories 17(a), 17(b) or 17(c) is in the affirmative, state the names of said defendants.

19. Will the defendants contend at the trial that more than one year prior to March 14, 1949, the filing date of the application which resulted in Letters Patent No. 2,618,919, Sam H. Boggs,

- (a) made,

(b) used,

(c) sold,

a device as defined in at least one claim of said patent?

20. Will defendants contend at the trial that more than one year prior to June 16, 1950, the filing date of the application which resulted in Letters Patent No. 2,719,398, Sam H. Boggs,

(a) made,

(b) used,

(c) sold,

a device as defined in at least one claim of said patent?

21. If the answer to Interrogatories 19(a), 19(b), 19(c) is in the affirmative, describe said device.

22. If the answer to Interrogatories 20(a), 20(b), 20(c) is in the affirmative, describe said device.

23. What have been the operating functions of,

(a) King O'Lawn Manufacturing Company,  
Los Angeles, California.

(b) King O'Lawn, Inc., a corporation, Los  
Angeles, California,

since November 25, 1952, to the present date?

24. What are the names of the directors and the length of service of each as such of King O'Lawn, Inc., since November 25, 1952, to the present date?

25. What are the names of the officers and the length of service of each as such of King O'Lawn Manufacturing Company, since November 25, 1952, to the present date? [12]

26. Has

- (a) King O'Lawn Manufacturing Company,
- (b) King O'Lawn, Inc.,

since November 25, 1952, made assignment for the benefit of creditors?

27. If the answer to Interrogatories 26(a) or 26(b) is in the affirmative, state in detail the circumstances surrounding said assignment, and give the names of the creditors for whom said assignment was made.

28. Has

- (a) King O'Lawn Manufacturing Company,
- (b) King O'Lawn, Inc.,

at any period since November 25, 1952, been operated by an assignee?

29. If the answer to Interrogatories 28(a) or 28(b) is in the affirmative, what is the name and address of said assignee, and what are the dates between which assignee acted in an operating capacity?

30. What portion of King O'Lawn Manufacturing Company is owned by

- (a) Louis B. Fass,
- (b) Leonard Faas,
- (c) Walter Faas,
- (d) Rudolph Faas?

Please take notice that a copy of such answers must be served upon the undersigned within fifteen (15) days after the service of these interrogatories.

Dated: December 1, 1955.

WILLIAM C. BABCOCK,

FREDERICK E. MUELLER,

By /s/ WILLIAM C. BABCOCK,

Attorneys for Plaintiff.

[Endorsed]: Filed December 5, 1955. [13]

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[Title of District Court and Cause.]

DEFENDANTS' ANSWERS TO PLAINTIFF'S  
INTERROGATORIES

Comes now defendants and in answer to Interrogatories propounded by Plaintiff, submit the following:

I.

Interrogatory I:

Have either of the defendants, King O'Lawn Mfg. Co., or King O'Lawn, Inc., hereinafter referred to

jointly as King O'Lawn, authorized the printing of the advertising piece attached hereto and identified as Exhibit A?

Answer to Interrogatory I:

Yes. [16]

II.

Interrogatory II:

Have either of the defendants King O'Lawn since October 4, 1955, manufactured lawn edgers and trimmers as shown in said Exhibit A that are titled therein as

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model?

Answer to Interrogatory II:

Yes.

III.

Interrogatory III:

Have either of the defendants King O'Lawn since October 4, 1955, sold lawn edgers and trimmers as shown in said Exhibit A that are titled therein as

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model?

Answer to Interrogatory III:

Yes.

IV.

Interrogatory IV:

Does said advertising piece, Exhibit A, depict a portion of the externally viewable structure of models

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model, [17]

as manufactured by the defendants King O'Lawn since October 4, 1955?

Answer to Interrogatory IV:

Yes.

V.

Interrogatory V:

If the answer to any one of the Interrogatories 4(a), 4(b), 4(c), or 4(d) is negative, what are the differences in structure of the edger manufactured from that shown in said Exhibit A?

Answer to Interrogatory V:

See answer to Interrogatory IV.

VI.

Interrogatory VI:

Does said advertising piece, Exhibit A, depict a portion of the externally viewable structure of models

- (a) Junior Model,
- (b) Gardener Model,



(c) Special Model,

(d) Senior Model,

sold by the defendants King O'Lawn since October 4, 1955?

Answer to Interrogatory VI:

Yes.

## VII.

Interrogatory VII:

If the answer to any one of the Interrogatories 6(a), 6(b), 6(c), or 6(d) is negative, state the differences in structure of the edger sold from that shown in said Exhibit A.

Answer to Interrogatory VII:

See answer to Interrogatory VI. [18]

Interrogatory VIII:

On what date was said

(a) Junior Model,

(b) Gardener Model,

(c) Special Model,

(d) Senior Model

first sold by the defendants King O'Lawn?

Answer to Interrogatory VIII:

(a) Approximately December of 1950,

(b) Approximately July of 1949,

(c) Approximately July or August, 1951,

(d) Approximately July or August, 1951.



IX.

Interrogatory IX:

On what date was said

- (a) Junior Model, .
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model

first manufactured by the defendants King  
O'Lawn?

Answer to Interrogatory IX:

- (a) Approximately December of 1950,
- (b) Approximately July of 1949,
- (c) Approximately July or August, 1951,
- (d) Approximately July or August, 1951.

X.

Interrogatory X:

Does the

- (a) Junior Model,
- (b) Gardener Model, [19]
- (c) Special Model,
- (d) Senior Model

as shown in said Exhibit A include an engine adapted to drive a rotating cutter at a constant speed, irrespective of the rate at which the edger is manually moved over the ground?

Answer to Interrogatory X:

Yes.

## XI.

Interrogatory XI:

Does the

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model,
- (d) Senior Model

as shown in said Exhibit A include a wheel-supported base on which an engine is mounted, which base may be angularly adjusted relative to the surface on which said wheels rest?

Answer to Interrogatory XI:

Yes. In each model (a), (b), (c), and (d) the base is supported by two rear wheels and one forward wheel. The supporting arm for the forward wheel may be angularly adjusted relative to the base, so that the base may be angularly adjusted about the axis of the rear wheels, thereby to adjust the base angularly relative to the ground.

## XII.

Interrogatory XII:

Can the rotating cutter of the

- (a) Junior Model,
- (b) Gardener Model,
- (c) Special Model, [20]
- (d) Senior Model

be inserted for trimming or edging purposes into an area that is too small for the engine-supporting portion of the device to enter?

Answer to Interrogatory VII:

No. The front wheel in each model (a), (b), (c), and (d) extends forward substantially to the axis of the cutter blade, and the distance between the remote sides of the wheel and cutter blade is substantially the same as the engine-supporting portion of the device when the cutter blade is in a vertical position, and is greater than the engine-supporting portion when the cutter is in its horizontal position.

### XIII.

Interrogatory XIII:

If the answer to Interrogatories 12(a), 12(b), 12(c), or 12(d) is in the affirmative, can the cutter be driven at a substantially constant speed?

Answer to Interrogatory XIII:

No answer required.

### XIV.

Interrogatory XIV:

If the answer to Interrogatories 12(a), 12(b), 12(c), or 12(d) is in the affirmative, can the cutter be driven at a substantially constant speed when the engine-supporting portion of the device is stationary?

Answer to Interrogatory XIV:

No answer required. [21]

## XV.

## Interrogatory XV:

At the trial hearing will defendants contend that any one of the patents listed in Paragraph IX of their Answer to plaintiff's Amended Complaint discloses a device having an engine-driven rotatable cutter, which cutter can be driven at a substantially constant speed when disposed in an area too small for the engine-supporting portion of the device to enter?

## Answer to Interrogatory XV:

Yes.

## XVI.

## Interrogatory XVI:

If the answer to Interrogatory No. 15 is in the affirmative, state which of the patents will be relied upon as disclosing a device capable of so operating.

## Answer to Interrogatory XVI:

1. Martin—827,548, issued July 31, 1906.
2. Reed—1,141,268, issued June 1, 1915.
3. Dibble—1,798,402, issued Mar. 31, 1931.
4. Seymour—1,447,606, issued Mar. 6, 1923.
5. Adams—2,354,095, issued July 18, 1944.
6. Hillyer—2,365,408, issued Dec. 19, 1944.
7. Arsneau—2,435,192, issued Feb. 3, 1948.
8. Irwin, Jr.—2,439,607, issued Apr. 13, 1948.
9. Moss, et al.—2,524,466, filed Sept. 26, 1946.
10. McKinstry—2,597,017, filed May 9, 1949.
11. Knight\*—2,274,902, issued Mar. 3, 1942.

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\*Notice of this United States patent is given under Title 35, U.S.C. Section 282, and a copy is attached hereto. [22]

XVII.

Interrogatory XVII:

Will defendants contend at the trial that any one of them, more than one year prior to March 14, 1949, the filing date of the application which resulted in Letters Patent No. 2,618,919,

- (a) made,
- (b) used,
- (c) sold,

a device as defined in at least one claim of said patent?

Answer to Interrogatory XVII:

No, inasmuch as defendants are unable to find any claim in the Hutchens Letters Patent No. 2,618,919 which defines a device made, used, or sold at any time by defendants, including specifically any of the models shown in Exhibit A.

XVIII.

Interrogatory XVIII:

If the answer to Interrogatories 17(a), 17(b) or 17(c) is in the affirmative, state the names of said defendants.

Answer to Interrogatory XVIII:

No answer required.

XIX.

Interrogatory XIX:

Will the defendants contend at the trial that more than one year prior to March 14, 1949, the filing

date of the application which resulted in Letters Patent No. 2,618,919, Sam H. Boggs,

- (a) made,
- (b) used,
- (c) sold

a device as defined in at least one claim of said patent? [23]

Answer to Interrogatory XIX:

No, but defendants will contend that none of the claims of the Hutchens Letters Patent No. 2,618,919 define a device which is patentably distinct from the device depicted in the Sam H. Boggs patent No. 2,538,230; and defendants will further contend that Sam H. Boggs did, prior to his filing date of December 27, 1947, (a) make, (b) use, and (c) sell at least one lawn trimmer substantially identical to the drawings of said patent, and that the drawings in said patent were prepared from an actual operating model of said lawn trimmer.

## XX.

Interrogatory XX:

Will defendants contend at the trial that more than one year prior to June 16, 1950, the filing date of the application which resulted in Letters Patent No. 2,719,398, Sam H. Boggs,

- (a) made,
- (b) used,
- (c) sold,



a device as defined in at least one claim of said patent?

Answer to Interrogatory XX:

No, but defendants will contend that none of the claims of the Hutchens Letters Patent No. 2,719,398 define a device which is patentably distinct from the device depicted in the Sam H. Boggs patent No. 2,538,230; and defendants will [24] further contend that Sam H. Boggs did, prior to his filing date of December 27, 1947, (a) make, (b) use, and (c) sell at least one lawn trimmer substantially identical to the drawings of said patent, and that the drawings in said patent were prepared from an actual operating model of said lawn trimmer.

XXI.

Interrogatory XXI:

If the answer to Interrogatories 19(a), 19(b), 19(c) is in the affirmative, describe said device.

Answer to Interrogatory XXI:

No answer required.

XXII.

Interrogatory XXII:

If the answer to Interrogatories 20(a), 20(b), 20(c) is in the affirmative, describe said device.

Answer to Interrogatory XXII:

No answer required.

## XXIII.

Interrogatory XXIII:

What have been the operating functions of,

- (a) King O'Lawn Manufacturing Company,  
Los Angeles, California,
- (b) King O'Lawn, Inc., a corporation, Los  
Angeles, California,

since November 25, 1952, to the present date?

Answer to Interrogatory XXIII:

- (a) Manufacturing and selling power mowers  
and power edgers, attachments, parts and  
accessories; [25]
- (b) King O'Lawn, Inc., is an inactive com-  
pany, has conducted no business whatso-  
ever, and is without assets or liabilities.

## XXIV.

Interrogatory XXIV:

What are the names of the directors and the length of service of each as such of King O'Lawn, Inc., since November 25, 1952, to the present date?

Answer to Interrogatory XXIV:

- Louis D. Faas, since May 6, 1954.
- Leonard A. Faas, since May 6, 1954.
- Bernice H. Faas, since May 6, 1954.



XXV.

Interrogatory XXV:

What are the names of the officers and the length of service of each as such King O'Lawn Manufacturing Company, since November 25, 1952, to the present date?

Answer to Interrogatory XXV:

No officers, as King O'Lawn Manufacturing Company is a co-partnership.

XXVI.

Interrogatory XXVI:

Has

(a) King O'Lawn Manufacturing Company

(b) King O'Lawn, Inc.

since November 25, 1952, made assignment for the benefit of creditors?

Answer to Interrogatory XXVI:

(a) Yes.

(b) No. [26]

XXVII.

Interrogatory XXVII:

If the answer to Interrogatories 26(a) or 26(b) is in the affirmative, state in detail the circumstances surrounding said assignment, and give the names of the creditors for whom said assignment was made.

## Answer to Interrogatory XXVII:

A copy of the assignment of February 1, 1955, is attached hereto:

The names of the creditors are as follows:

Acme Gasket, Inc.

Acme Green Printing Co.

Addressograph Sales & Service

Albright Display Co.

Albrights

Alemite Co.

Amazol Co.

Angelus Steel Treating Co.

Andrews Hardware & Metal

Arrow Paint Co.

T. Ashbrook

Associated Graphic Arts

Acme Fast Freight, Inc.

Ad-Craft Sign Co., Inc.

American Linen Supply Co.

W. A. Bullis

Bearing House

Bell Equipment Co.

Andrew Brown Co.

W. M. Butcher & Ethel L. Butcher

Berg Typewriter Co. [27]

City Business Directory Publishers

C & H Supply Co.

California Spring Co.

A. M. Castle Co.

Clinton Machine Co.

Coast Die Casting Co.  
Cold Metal Products  
Cook Heat Treating, Inc.  
Cox Photo Service  
Crucible Steel Co. of America  
Container Corp. of America  
Cincinnati Gas & Electric Co.  
Cincinnati & Suburban Bell Telephone Co.  
California Mfg. Association  
Darnell Corporation  
Die Cast Products, Inc.  
Daily Grinding Co.  
Degen-Fiege Co.  
Deutsch Co.  
Dister Printing Co.  
Drake Steel Co.  
Ducommun Metals and Supply  
Dunning Iron Store  
Reuben H. Donnelley Corp.  
Electro Castings Co.  
Electric Equipment Co.  
Empire Tool Co.  
Fondron Dust Cloth & Wiping Rag Co.  
Francis F. Folaron  
F & F Sheet Metal Co.  
Ferrell Electric Co.  
Fibreboard Products, Inc. [28]  
Fowler Kenworthy Electric Co.  
Franklin Plastics  
Fullerton Mfg. Co.  
Fafnir Bearing Co.  
Garden Supply Merchandiser

Gates Rubber Co.  
Goodyear Tire & Rubber Co.  
Golden State Advertising Co.  
Hardware News  
Honorbilt, Inc.  
Hardware Age  
Hamilton Sign Co.  
Julius Herman Corp.  
Ideal Hardware Co.  
International Harvester Co.  
Indus Corporation  
Johnson Aluminum Co.  
Justice Co.  
Kensco, Inc.  
K & L Pattern Co.  
Kirkhill Rubber Co.  
K.D.K. Products Co.  
Kwikset Lock, Inc.  
Kleen Towel Service Co.  
Erwin Lamps  
Layton Rentals  
Les Stark Florist  
O. D. Lewis  
Link Belt Co.  
Lyon & Lyon  
Lyon Metal Products, Inc.  
Martha's Fountain Grill  
Miller-Barnes Oil Co.  
Machinists Tool & Supply [29]  
Maltby Co.  
Mantz Co.  
Meyer Sheet Metal Co.

Micro Precision Co.  
J. W. Minder Chain Co.  
Musto Keenan Co.  
Ben Miller, Inc.  
North American Van Lines  
Nice Ball Bearing Co.  
National Sanitary Supply  
New Departure  
Nu Chem Products  
National Carloading Corp.  
Oscar & Associates, Inc.  
Orange County Printing Co.  
Overton Foundry  
Pacific Telephone & Telegraph Co.  
Pacific File Co.  
Park Adding Machine Co.  
Peck Steel & Die Supply  
Phoenix Castor Co., Inc.  
Pitney Bowes  
Pacific Ports  
Rawlins Bros.  
Rempel Lumber & Bldg. Material Co.  
Hotel Sherman  
Southern Calif. Edison Co.  
Stor-Dor Forwarding Co.  
Southern Calif. Gas Co.  
R. R. Shackelford  
Signode Steel Strapping Co.  
Shepherd Tractor [30]  
Smith & Williams  
Shultz Steel Co.  
Southern Bolt Co.

So. Gate Rubber Stamp  
Standard Oil Co.  
S.K.F. Industries, Inc.  
Savage Auto Supply  
J. J. Stephensen  
Strauss Dec. & Exp. Co., Inc.  
Standard Oil Co.  
Timken Roller Bearing Co.  
Torrington Co.  
Tubesales  
Times-Mirror Co.  
Transport Clearings  
Union Oil of California  
Underwood Corporation  
Van Z Office Supply  
Universal Carloading & Dist. Co.  
Wales Strippit Corp.  
Western Metal Co.  
Woods General Tire Co.  
Western Gear Works  
Wilson's Motor Freight  
Richard L. Wheelwright  
Western Union Telegraph Co.  
Ziegler Steel Service  
Ziegler Hardware Co.  
Zenith Die Cast Co.  
Zenith Screw Products [31]

## XXVIII.

Interrogatory XXVIII:

Has

(a) King O'Lawn Manufacturing Company

(b) King O'Lawn, Inc.

at any period since November 25, 1952, been operated by an assignee?

Answer to Interrogatory XVIII:

(a) Yes.

(b) No.

XXIX.

Interrogatory XXIX:

If the answer to Interrogatories 28(a) or 28(b) is in the affirmative, what is the name and address of said assignee, and what are the dates between which assignee acted in an operating capacity?

Answer to Interrogatory XXIX:

The assignee of King O'Lawn Manufacturing Company is: Credit Managers Association of Southern California, M. W. Engleman, 1501 West Eighth Street, Los Angeles 17, California.

The assignee has been operating the King O'Lawn Manufacturing Company since February 2, 1955, and is still operating the business as of this date, December 8, 1955.

XXX.

Interrogatory XXX:

What portion of King O'Lawn Manufacturing Company is owned by

(b) Leonard Faas



- (c) Walter Faas
- (d) Rudolph Faas? [32]

Answer to Interrogatory XXX:

- (a) Louis D. Faas, 25%
- (b) Leonard Faas, 25%
- (c) Walter Faas, None
- (d) Rudolph Faas, None

The foregoing answers are made without prejudice to modification or correction should any error be found or additional information obtained.

/s/ LOUIS FAAS,

/s/ LEONARD FAAS.

KING O'LAWN MFG. CO.,

By /s/ LOUIS D. FAAS,  
Partner;

/s/ LEONARD FAAS,  
Partner.

State of California,  
County of Los Angeles—ss.

Subscribed and sworn to before me this 10th day  
of December, 1955.

[Seal] /s/ KARAWAY KENTON,  
Notary Public in and for the County and State  
Above Named.

My commission expires Aug. 24, 1956. [33]



## General Assignment

This Assignment, made this 1st day of February, 1955, by Louis D. Faas, Bernice H. Faas, Leonard A. Faas and Genevieve E. Faas, a Co-Partnership dba King O'Lawn Manufacturing Co., South Gate, parties of the first part, hereinafter referred to as assignor, to M. W. Engleman of Los Angeles, California, party of the second part, hereinafter referred to as assignee.

Witnesseth: That said assignor, for and in consideration of the covenants and agreements to be performed by the party of the second part, as hereinafter contained, and of the sum of One Dollar (\$1.00) to assignor in hand paid by said assignee, receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, assign, convey and transfer unto said assignee, his successors and assigns, in trust, for the benefit of assignor's creditors generally, all of the property of the assignor of every kind and nature and wheresoever situated, both real and personal, and any interest or equity therein not exempt from execution, including all that certain stock of merchandise, store furniture and fixtures, book accounts, books, bills receivable, cash on hand, choses in action, insurance policies, and all other personal property of every kind and nature situated in or pertaining to that store and now owned and conducted by said assignor, at 5216 Chakemco Street, in the City of South Gate, County of Los Angeles, State of California, except leases and leasehold interests in real estate. Said assignee

is to receive the said property, conduct the said business, should he deem it proper, and is hereby authorized at any time after the signing hereof by the assignor to sell and dispose of the said property upon such time and terms as he may see fit, and is to pay creditors of the first party pro rata, according to the several indebtedness due to them from the said assignor, the net proceeds arising from the conducting of said business and sale and disposal of said property after deducting all moneys which said assignee may at his option pay for the discharge of any lien on any of said property and any indebtedness which under the law is entitled to priority of payment, and all expenses, including a reasonable fee to assignee and his attorney and to attorney for assignor.

Said assignee is also authorized and empowered to transfer and assign any or all of said property to the Los Angeles Wholesalers' Board of Trade, a Corp., for the purposes and upon the terms and conditions set forth herein, and said assignee is authorized and empowered to appoint such agents, adjusters and/or attorneys as he may deem necessary, and such agents, adjusters and/or attorneys shall have full power and authority to open bank accounts in the name of the assignee and to deposit assigned assets or the proceeds thereof in such bank accounts and to draw checks thereon and with the further power and authority to do such other acts and to execute such papers and documents in con-

nection with this assignment as said assignee may consider necessary or advisable.

In Witness Whereof, the said parties have hereunto set their hands the day and year first above written.

LOUIS D. FAAS,  
BERNICE H. FAAS,  
LEONARD A. FAAS,  
GENEVIEVE E. FAAS,

A Co-Partnership d.b.a. King O'Lawn Manufacturing Company.

/s/ LEONARD A. FAAS,  
/s/ LOUIS D. FAAS,  
/s/ GENEVIEVE E. FAAS,  
/s/ BERNICE H. FAAS,  
/s/ W. M. ENGLEMAN.

[Endorsed]: Filed December 12, 1955. [34]

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[Title of District Court and Cause.]

DEFENDANT'S REPLY TO PLAINTIFF'S  
REQUEST FOR ADMISSION OF FACTS

Defendants admit the truth of each of the factual statements in Plaintiff's Request for Admission of Facts, except that in Statements 9 and 10 the rotatable cutter cannot enter an area which is too small

to accommodate the engine-supporting base of the device. [40]

/s/ LOUIS D. FAAS,

/s/ LEONARD FAAS,

KING O'LAWN MFG. CO.,

By /s/ LOUIS D. FAAS,

Partner;

/s/ LEONARD FAAS,

Partner.

State of California,  
County of Los Angeles—ss.

Subscribed and sworn to before me this 10th day  
of December, 1955.

[Seal] /s/ KARAWAY KENTON,  
Notary Public in and for the County and State  
Above Named.

My commission expires Aug. 24, 1956.

[Endorsed]: Filed December 12, 1955. [41]

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[Title of District Court and Cause.]

## PLAINTIFF'S SECOND INTERROGATORIES

To Lyon & Lyon, 811 West Seventh Street, Los  
Angeles 17, California, Attorneys for Defend-  
ants:

The plaintiff requests that each of the defendants  
named above answer under oath in accordance with

Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. Will defendants contend at the trial that any one of the claims in patent No. 2,618,919 describe the apparatus shown [43] in patent No. 2,719,398?

2. If the answer to Interrogatory No. 1 is in the affirmative, which claim or claims do defendants so contend?

3. Will defendants contend at the trial that positioning of the trimmer blade 10 and cutter 19 relative to the ground surface by use of handle 29, as shown in patent No. 2,618,919, is

(a) described in the specification

(b) claimed

in patent No. 2,618,919?

4. Will defendants contend at the trial that side members 1 and 2, shown in Figure 1 of patent No. 2,618,919, are

(a) shown

(b) described in the specification

(c) claimed

in patent No. 2,719,398?

5. Will defendants contend at the trial that any one of the claims in patent No. 2,618,919 describe the lawn trimmer

(a) shown in the drawings

(b) described in the specification

of patent No. 2,719,398?



6. If the answer to Interrogatory No. 5(a) and/or No. 5(b) is in the affirmative, which of said claims so describes said lawn trimmer?

7. Will defendants contend at the trial that the filing date of the application from which patent No. 2,719,398 matured, does not relate back to June 16, 1950?

8. Will defendants contend at the trial that patent application Serial No. 419,196, that matured into patent No. 2,719,398 is not a Continuation of patent application Serial No. 168,506?

9. Will defendants contend at the trial that any one of the claims in patent No. 2,719,398 is invalid for double patenting in view of patent No. 2,618,919? [44]

10. If the answer to Interrogatory No. 9 is in the affirmative, which claim or claims will defendants contend to be so invalid?

Dated: December 14, 1955.

WILLIAM C. BABCOCK,

FREDERICK E. MUELLER,

By /s/ WILLIAM C. BABCOCK,

Attorneys for Plaintiff.

[Endorsed]: Filed December 16, 1955. [45]

[Title of District Court and Cause.]

DEFENDANTS' REPLY TO PLAINTIFF'S  
SECOND REQUEST FOR ADMISSION OF  
FACTS

Defendants admit the truth of each of the factual statements in Plaintiff's Second Request for Admission of Facts, except as follows:

Statement No. 7.

"That patent No. 2,618,919 describes the positioning of cutter 19 relative to the ground surface solely by pivotal movement of adjusting lever 13."

The statement is untrue because patent 2,618,919 contains the following description at column 3, lines 46-55:

"In the operation of my apparatus, when it is desired to trim the edges of the lawn along a sidewalk or a flower bed or any other thing, the right [47] hand arm may be lowered and put in adjusted position so that as the machine is held in the desired position by the handle, the teeth of the vertical edger blade 19 will extend to the desired distance relative to the surface of the turf or ground or walk." (Emphasis added.)

Statement No. 13.

"That Claim 15 of patent No. 2,618,919 does not describe the lawn trimmer

- (a) shown in the drawings
- (b) described in the specification of patent No. 2,719,398."



The statement and both parts thereof are untrue because Claim 15 of Patent No. 2,618,919 does describe the lawn trimmer (a) shown in the drawings and (b) described in the specification of patent No. 2,719,398.

/s/ LOUIS D. FAAS,

/s/ LEONARD A. FAAS.

KING O'LAWN MANUFACTURING CO.,

By /s/ LOUIS D. FAAS,  
Partner;

/s/ LEONARD A. FAAS,  
Partner.

Subscribed and sworn to before me this 27th day of December, 1955.

[Seal] /s/ LOUISE HARRISON,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires November 3, 1958.

[Endorsed]: Filed December 27, 1955. [48]

[Title of District Court and Cause.]

SECOND AMENDED COMPLAINT FOR IN-  
FRINGEMENT OF UNITED STATES LET-  
TERS PATENT No. 2,719,398

Plaintiff complains of defendants, and for cause of action alleges:

I.

This action arises under the patent laws of the United States, more particulrly 35 U.S.C. Sec. 271, 281, as hereinafter more fully appears. Jurisdiction is conferred in this Court by 28 U.S.C. Sec. 1338.

II.

King O'Lawn Manufacturing Co. is a partnership comprised of Louis D. Faas, Bernice H. Faas, Leonard A. Faas, and Genevieve E. Faas, co-partners, and has a regular and established place of [55] business in Los Angeles County in the Southern Judicial District of California.

III.

Defendants Walter Faas and Rudolph Faas reside and have regular and established places of business in Los Angeles County in the Southern Judicial District of California.

IV.

Defendant M. W. Engleman, Assignee for Benefit of Creditors for Defendant King O'Lawn Manufacturing Co., has a regular and established place of business in Los Angeles County in the Southern Judicial District of California, and since February

2, 1955, to the present date has operated and managed said company.

V.

King O'Lawn, Inc., is a corporation, and has a regular and established place of business in Los Angeles County in the Southern Judicial District of California.

VI.

On October 4, 1955, United States Letters Patent No. 2,719,398 were duly and legally issued to plaintiff for an invention in a Lawn Trimmer; and since that date plaintiff has been and still is the owner of said patent No. 2,719,398.

VII.

The defendants and each of them have been and still are infringing said patent No. 2,719,398 by making, selling and using lawn trimming and edging apparatus embodying the patented invention and will continue to do so unless enjoined by this Court.

VIII.

The defendants and each of them have conspired to wilfully and intentionally infringe said Letters Patent, and pursuant to such wrongful design they have jointly and severally infringed said Letters Patent and rendered them valueless. [56]

IX.

Plaintiff has placed the required statutory notice on all lawn trimming and edging apparatus manufactured and sold by him and under license from

him under said Letters Patent and has given written notice to defendants of their said infringements.

Wherefore, plaintiff demands a preliminary and final injunction against further infringement by defendants, and each of them, and those controlled by defendants; an accounting for profits and damages; and an assignment of costs against defendants.

WILLIAM C. BABCOCK,

FREDERICK E. MUELLER,

By /s/ WILLIAM C. BABCOCK,

Attorneys for Plaintiff.

Affidavit of Service by Mail attached.

Filed nunc pro tunc December 28, 1955, W.  
Mathes, Judge. [57]

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[Title of District Court and Cause.]

STIPULATION AND DISMISSAL AS TO  
PATENT No. 2,618,919

Subject to the approval of the Court, it is stipulated by and between counsel for parties in the above-entitled action, as follows:

(1) A full size operating machine as shown in the Boggs Patent No. 2,538,250 was in existence and in public use in Dallas, Texas, on December 29, 1947. The construction of that machine is further shown in copies of drawings dated 6/19/47 and attached hereto as exhibit "A." The cutter head 38 was fixed

on the round shaft 36, and the latter was slidably received within tubular arm 34 and held in adjusted position by means of the set screw 37. The supporting wheels 11 were at least eight inches in diameter.

(2) The Knight Patent No. 2,274,902, granted March 3, 1942, [50] shall be considered with the same force and effect as though it has been set out in the Answer to Amended Complaint, filed in this cause on November 10, 1955.

(3) On or about August 10, 1948, plaintiff sold a full size operating machine to the City of Huntington Park, California, and that machine was used publicly by city employees during the year 1948. The machine was known as the "Duo Lawn Edger" and was constructed in conformity with the drawings of the Hutchens Patent No. 2,618,919 and was identical in all material respects to the machine referred to as defendants' Exhibit "Y" in the deposition of plaintiff Ralph O. Hutchens taken in Los Angeles, California, beginning on November 30, 1955. The attached photographs identified as exhibits "B" and "C" show the machine so designated as Exhibit "Y" in said deposition.

(4) This action is dismissed with prejudice as to the Hutchens Patent No. 2,618,919.

(5) Claims 6, 7, 8, 9, 10, 15 and 16 of Patent No. 2,719,398 are the only claims relied upon by plaintiff in this action.

(6) The effective filing date of the Hutchens Patent No. 2,719,398 is June 16, 1950.

(7) Defendants will produce at the trial one of the accused devices and also the "Duo Lawn Edger" referred to as defendants Exhibit "Y" in said deposition of Ralph O. Hutchens.

(8) Title to the Hutchens Patent No. 2,719,398 resides in plaintiff.

Dated: This 22nd day of December, 1955.

LYON & LYON,  
Attorneys for Defendants.

By /s/ JOHN B. YOUNG.

WILLIAM C. BABCOCK,  
FREDERICK E. MUELLER,  
Attorneys for Plaintiff.

By /s/ WILLIAM C. BABCOCK.

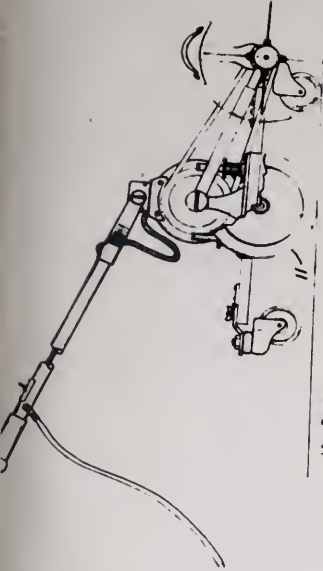
It is so ordered this 28th day of December, 1955.

/s/ WILLIAM C. MATHES,  
Judge, U. S. District Court.



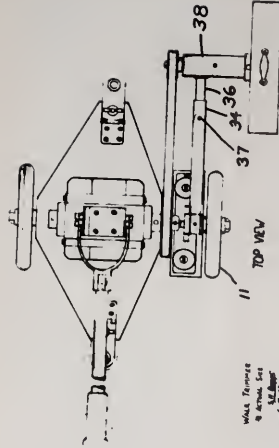






CUTTING SIDE VIEW

WALL THICKNESS  
- 12" APPROX. SIZE  
6" THICK  
6-17-67



TOP VIEW

WALL FACING  
TO AREA SEE  
S.H. 100-01  
6-19-63

$\rho_{1,2} = \rho_{1,2}^0 + \rho_{1,2}^1 \epsilon + \rho_{1,2}^2 \epsilon^2 + \dots$

2

Exhibit "A"



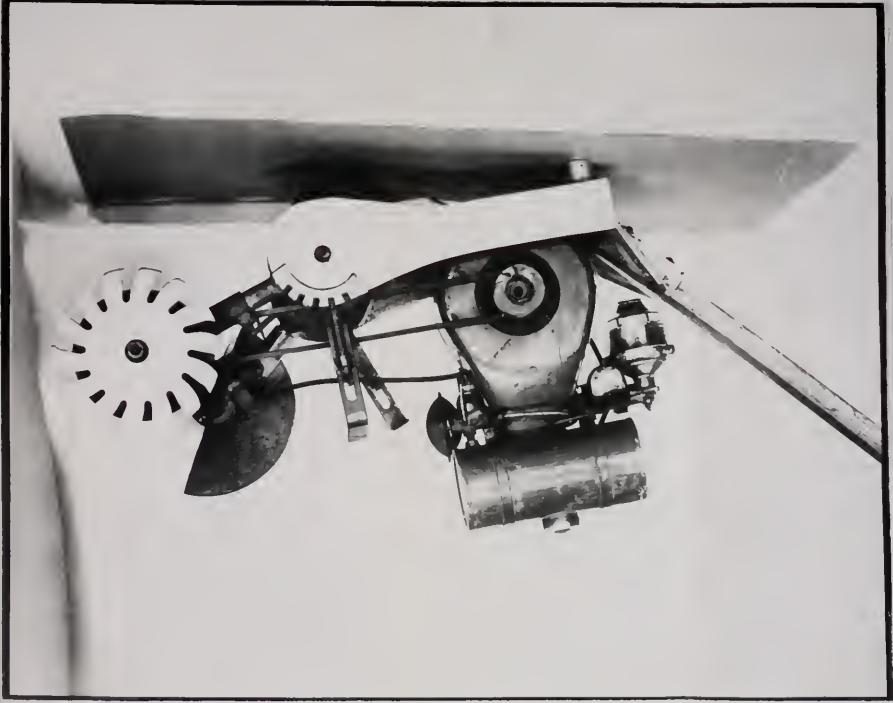
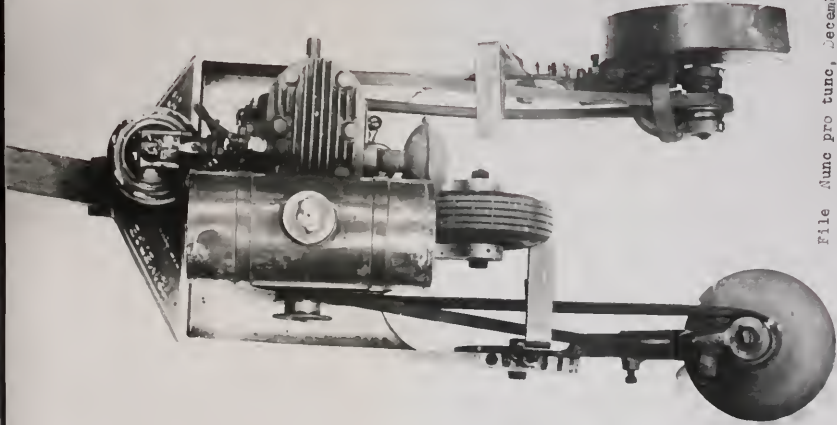


EXHIBIT "B"





File Nunc pro tunc, December 28, 1955  
Mathea, Judge.

Endorsed: Filed January 3, 1956.

EXHIBIT "C"

54



[Title of District Court and Cause.]

ANSWER TO SECOND AMENDED  
COMPLAINT

Come Now the defendants, by their attorneys,  
Lyon & Lyon, and answering the amended com-  
plaint herein, allege:

I.

Answering Paragraph I of the second amended  
complaint, defendants admit the allegations thereof.

II.

Answering Paragraph II of the second amended  
complaint, defendants admit the allegations thereof.

III.

Answering Paragraph III of the second amended  
complaint, [59] defendants admit the allegations  
thereof.

IV.

Answering Paragraph IV of the second amended  
complaint, defendants admit the allegations thereof.

V.

Answering Paragraph V of the second amended  
complaint, defendants admit the allegations thereof.

VI.

Answering Paragraph VI of the second amended  
complaint, defendants admit that on October 4,  
1955, the United States Letters Patent No. 2,-  
719,398 were issued to Ralph O. Hutchens for a



Lawn Trimmer but defendants deny that said Letters Patent were duly or legally issued for an invention. Defendants admit that plaintiff has been and still is the owner of said Patent Number 2,719,398.

#### VII.

Answering Paragraph VII of the second amended complaint, defendants deny each and all of the allegations of said Paragraph 7.

#### VIII.

Answering Paragraph VIII of the second amended complaint, defendants deny each and all of the allegations of said Paragraph 8.

#### IX.

Answering Paragraph IX of said second amended complaint, defendants are without sufficient knowledge to form a belief as to the truth of the allegations of Paragraph IX except that defendants acknowledge receipt of written notice of infringement from plaintiff.

As Separate and Additional Defenses, Defendants Allege:

#### X.

That said Letters Patent No. 2,719,398 and each and every claim thereof, are invalid and void as not involving invention nor [60] patentable subject matter, because in view of the common public knowledge disclosed by the state of the art prior to the pretended inventions of the alleged inventor,

it did not require nor involve invention to produce the purported inventions of said Letters Patent, but on the contrary, involved merely mechanical skill and such ordinary adaptation and utilization of well-known matter as was within the common knowledge and ability of any person possessing ordinary skill and knowledge of that art and closely related arts.

## XI.

That said Letters Patent No. 2,719,398, and each and every claim thereof, are invalid and void as not involving novelty nor involving invention nor patentable subject matter in view of the art prior to the date of the alleged invention of said Letters Patent; that said Letters Patent lacked novelty and required no invention to produce the alleged inventions and that the alleged inventions did not differ in any patentable respect from what was before said alleged inventions, or more than the respective statutory periods prior to the effective filing dates of the applications for said Letters Patent, invented and constructed, known or used in this country or described in patents and printed publications, enumerated as follows:

### United States Letters Patent

No.	Inventory	Date
827,548—	Martin.....	July 31, 1906.
2,274,902—	Knight.....	March 3, 1942.
2,354,095—	Adams.....	July 18, 1944.
2,435,192—	Arsneau.....	February 3, 1948.

2,439,607—Irwin.....	April 13, 1948.
2,524,466—Moss et al.....	October 3, 1950.
2,538,230—Boggs .....	January 16, 1951.
2,597,017—McKinstry.....	May 20, 1952.

## XII.

That none of the claims in the said Letters Patent No. 2,719,398, are infringed by defendants because the alleged patentee is estopped and forever precluded from contending for a broad interpretation of the claims thereof such as would include or subordinate any device made, used or sold by defendants, because broad claims were cancelled and admitted in response to rejections made by the Patent Office and narrower claims accepted, and because of the arguments made to obtain allowances of claims in the applications for said Letters Patent.

## XIII.

That said Letters Patent No. 2,719,398, and each and every claim thereof are invalid and void because the alleged invention does not comprise a new and patentable combination of elements, but constitutes a mere aggregation of old elements producing no new result nor effect.

## XIV.

That defendants allege that all of the claims of said Letters Patent No. 2,719,398 are invalid because the alleged invention purportedly described and claimed in said claims were merely the result of the exercise of the ordinary facilities of reasoning

aided by the special knowledge and facility of manipulation which is acquired through the habitual and intelligent practice of the art and is not the result of that inventive faculty which is the purpose of the Constitution and Patent Laws to encourage and reward, and involving nothing more than the exercise of mere mechanical skill in view of the state of the art as known at the time of, and long prior to, the alleged inventions thereof by the applicant for said Letters Patent, said state of the art including the prior patents referred to in Paragraph XI.

#### XV.

Defendants allege that while the applications for said [62] Letters Patent, No. 2,719,398, were pending in the United States Patent Office, the applicant therefor so limited and confined the claims of said applications that plaintiff cannot now seek nor obtain a construction of any of the claims of said Letters Patent No. 2,719,398 sufficiently broad to cover any devices made, used or sold by defendants.

#### XVI.

Defendants further allege that Letters Patent No. 2,719,398 are invalid and void for double patenting and that the elements of the combination claimed in said Letters Patent are substantially the same elements claimed in Letters Patent No. 2,618,919.

#### XVII.

Defendants further allege that said Letters Patent No. 2,719,398 are invalid because the alleged

invention purportedly defined by the claims thereof were known to or used by others in the United States prior to the alleged invention by applicant therefor, including defendants herein, and including those inventors named in the prior patents and the assignees named in said prior patent set forth in Paragraph XI hereof.

### XVIII.

Defendants further allege that said Letters Patent No. 2,719,398 are invalid and void because the alleged invention purportedly defined by the claims thereof had been on sale and in public use in the United States for more than one year prior to June 16, 1950, the effective filing date of the application resulting in Letters Patent No. 2,719,398, and that said alleged invention was known to be on sale and in public use prior to June 16, 1950, by each of the following persons:

Sam H. Boggs, Dallas, Texas;

Louis D. Fass, Defendant herein;

Ralph O. Hutchens, Plaintiff herein. [63]

### XIX.

Plaintiff has committed acts of unfair competition in sending notices of patent infringement to defendants' customers and distributors charging infringement of Patents Nos. 2,618,919 and 2,719,398 without cause and with intent to damage defendants' business.

Wherefore, defendants pray:



1. That Letters Patent No. 2,719,398 and each of the claims thereof be declared invalid and of no force and effect;

2. That defendants be declared not to infringe the aforesaid Letters Patent, and each of the claims thereof;

3. That all costs, including reasonable attorneys' fees and other taxable items, be taxed against plaintiff; and

4. That defendants have such other, further and different relief as to this Court may be just and equitable.

Dated at Los Angeles, California, this 29th day of December, 1955.

LYON & LYON,  
LLOYD SPENCER,  
JOHN B. YOUNG,

By /s/ JOHN B. YOUNG,  
Attorneys for Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 29, 1955. [64]

[Title of District Court and Cause.]

PLAINTIFF'S MOTION FOR NEW TRIAL  
RULE 59(a)

Plaintiff moves the Court to set aside the proposed Findings of Fact, Conclusions of Law and Judgment, and to grant plaintiff a new trial on the grounds that:

1. The Court erred in ruling that the claims at issue in the patent in suit, particularly Claim 16, was not infringed, when defendants by their answers to plaintiff's Interrogatories and Request for Admission of Facts which were admitted as evidence into the case without objection, as well as the testimony of Louis D. Fass, admitted such infringement.

2. The Court erred in ruling that the device of the patent in suit must be limited to a very narrow range of equivalents.

3. The Court erred in ruling that Claim 16 of the patent in suit when read literally is not infringed by devices manufactured or sold by defendants since October 4, 1955. [66]

4. The Court erred in ruling that Claim 16 of the patent in suit when read literally describes the device disclosed in the Hutchens patent No. 2,618,919.

5. The Court erred in ruling that Claim 16 of the patent in suit, if read broadly enough to describe the accused device, also describes the device shown.



described and claimed in the Hutchens patent No. 2,618,919.

6. The judgment is contrary to law in that the evidence in the case does not support same.

WILLIAM C. BABCOCK,

FREDERICK E. MUELLER,

By /s/ WILLIAM C. BABCOCK. [67]

### MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR NEW TRIAL

1. Defendants by their response dated December 10, 1955, to plaintiff's First Request for Admission of Facts filed December 2, 1955, and particularly those responses to Requests Nos. 3, 4, 5, 6, 7, 8 and 11, have admitted that devices embodying the structure as defined in Claim 16 of the patent in suit have been manufactured and sold since October 4, 1955, the issue date of said patent. The Court's judgment of no infringement of Claim 16 is directly contra to facts that have been admitted by defendants, and which are not in issue.

2. The Court's ruling that the device of the patent in suit must be limited to a very narrow range of equivalents is believed erroneous, particularly in view of the fact that defendants were unable to provide any anticipation of the structure of the device as defined in Claim 16 of the patent in suit, or a prior device embodying only the elements

defined in Claim 16 that could be used for either lawn trimming or lawn edging operations. The claims at issue define a device which fills a long-felt need for a power-driven lawn edger and trimmer, and one which those skilled in the art were not, prior to the plaintiff, able to provide. The prior art may be crowded as the Court suggests, but it is crowded with impractical and unworkable devices that cannot be used in the simple manner of plaintiff's device or having the structure thereof.

Just such a situation prevailed in *Stearns vs. Tinker & Rasor*, 104 U.S.P.Q. 234, 240 (CCA 9, 1955) wherein the Court stated,

“We have here, then, a patent for an improvement which fills a long-felt need, which those schooled in the art had not been able to devise before the patentee, and which meets with acceptance in the market. When these indicia of invention are taken into account [68] together with the true state of the prior art and what Stearns actually did to improve the art, it must be concluded that the Stearns patent is not invalid for want of invention. *Expanded Metal Co. v. Bradford*, 214 U.S. 366, 381; *Eibel Process Co. v. Minnesota & Ontario Paper Co.*, 261, U.S. 45, 56; *Johnson Company, Inc., v. Philad Co.*, 9 Cir., 96 F.2d 442, 444, 37 USPQ 570, 572-573; *Research Products Co. v. Tretolite Co.*, 9 Cir. 106 F.2d 530, 532, 43 USPQ 99, 100-101; *Tyra v. Adler*, 8 Cir., 85 F.2d 548, 552, 31 USPQ 1, 4-5; *Ideal Roller & Mfg. Co.*

v. Sutherland Paper Co., 6 Cir., 96 F.2d 675, 677, 38 USPQ 101, 103-104.”

3. Each and every element defined in Claim 16 of the patent in suit is found in the illustrations of Exhibit A, attached to plaintiff's First Request for Admission of Facts filed December 2, 1955, which Requests and responses thereto were introduced into the case as evidence without objection from defendants.

4. For Claim 16 of the patent in suit to describe the device disclosed in the Hutchens patent No. 2,618,919, the plain language of said Claim 16 would have to be distorted to read that “a base” as set forth therein, is the equivalent of—a frame B preferably of metal comprising a base with side members 1 and 2 \* \* \* The side members 1 and 2 of the frame extend forwardly of the base and have racks 4 and 23.1 united to or formed integral therewith at their forward ends (lines 44-46, column 1 and lines 4-6, column 2 of the Hutchens patent No. 2,618,919). The drawings, specification and claims of the patent in suit do not even suggest the interpretation the Court proposes to give Claim 16 thereof.

5. The device disclosed in the Hutchens patent No. 2,618,919 requires as essential elements [69] thereof.

a. Side members 1 and 2 that extend forwardly from a base;

b. Racks 4 and 23.1 united to or formed integral with said side members at their forward ends;

c. Levers 12 and 13;

d. Plates 21 and 22 that pivotally support said levers from the forward end portions of said side members.

These elements are essential in the operation of the Hutchens device disclosed in patent No. 2,618,919, irrespective of whether the cutters thereof are used concurrently in edging and trimming, or whether one of the cutters is used individually for edging or trimming.

The elements tabulated above are not used in the Hutchens device in the patent in suit or in defendants' Junior, Gardener, Special or Senior Model, and would not serve any useful purpose if included as a part thereof. Therefore, Claim 16 of the patent in suit, if read literally, describes the Hutchens device as described and illustrated in the patent in suit, as well as defendants' Junior, Gardener, Special and Senior Models, but does not describe the device shown and described in the Hutchens patent No. 2,618,919.

6. The judgment is contrary to the law and not supported by the evidence for the reasons above set forth.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 25, 1956. [70]

In the District Court of the United States, Southern  
District of California, Central Division  
Civil Action No. 18564-WM

RALPH O. HUTCHENS,

Plaintiff,

vs.

LOUIS D. FAAS; BERNICE H. FAAS, LEON-  
ARD A. FAAS; GENEVIEVE E. FAAS; Co-  
Partners Doing Business as KING O'LAWN  
MANUFACTURING CO.; WALTER FAAS;  
RUDOLPH FAAS; M. W. ENGLEMAN, As-  
signee for Benefit of Creditors for KING  
O'LAWN MANUFACTURING CO.; KING  
O'LAWN, INC., a California Corporation,

Defendants.

## FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

This cause having come on for trial before the Court on Tuesday, January 3, 1956, witnesses for both parties having been heard, documentary and physical exhibits having been offered and received in evidence, counsel for both parties having been heard and the Court being fully advised in the premises hereby makes the following Findings of Fact and Conclusions of Law and Judgment:

### Findings of Fact

#### I.

This is an action for infringement of United Stated Letters Patent No. 2,719,398 issued on



October 4, 1955, to the plaintiff, Ralph O. [72] Hutchens.

## II.

Plaintiff Ralph O. Hutchens is the sole owner of the entire right, title and interest in and to said United States Letters Patent No. 2,719,398.

## III.

This Court has jurisdiction of the parties and the subject matter of the action.

## IV.

The original complaint filed August 16, 1952, alleged infringement of Patent No. 2,618,919 granted November 25, 1952. The amended complaint filed October 21, 1955, alleged infringement of said patent No. 2,618,919 and added a new patent No. 2,719,398. The action was dismissed with prejudice as to the said patent No. 2,618,919 by stipulation dated December 22, 1955. The second amended complaint was filed on or about December 22, 1955, and the answer thereto was filed on December 29, 1955.

## V.

Defendant King O'Lawn Manufacturing Co. is a co-partnership composed of defendants Louis D. Faas; Bernice H. Faas; Leonard A. Faas and Genevieve E. Faas, as co-partners, and has a place of business in the City of South Gate, State of California, within the Southern District of California, Central Division.

## VI.

Defendant M. W. Engleman is Assignee for Benefit of Creditors for said King O'Lawn Manufacturing Co. Defendants Walter Faas and Rudolph Faas reside in Los Angeles County, State of California, within the Southern District of California, Central Division.

## VII.

King O'Lawn, Inc., is a California Corporation having a place of business at Los Angeles, California. [73]

## VIII.

The claims in issue are Claims 6, 7, 8, 9, 10, 15 and 16 of said Patent No. 2,719,398.

## IX.

On or about August 10, 1948, plaintiff sold a full size operating machine to the City of Huntington Park, California, and that machine was used publicly by city employees during the year 1948, and more than one year prior to the effective filing date of said patent No. 2,719,398. The machine was known as the "Duo Lawn Edger" and was constructed in conformity with the drawings of patent No. 2,-618,989. A precise and faithful example of that machine was received in evidence as defendants' Exhibit "B."

## X.

A full size operating machine as shown in the Boggs patent No. 2,538,250 was in existence and in public use in Dallas, Texas, on December 29, 1947, and more than one year prior to the effective filing

date of said patent No. 2,719,398. The construction of that machine is further shown in copies of drawings dated 6/19/47, and received in evidence as part of defendants' Exhibit "A."

## XI.

The accused device as exemplified by defendants' Exhibit "E" employs three wheels for supporting the frame of the machine. Two rear wheels are mounted to rotate about a common axis and the third front wheel is mounted on an arm pivoted to the frame. The frame may be raised and lowered with respect to the front wheel by means of a lever system connected to the arm. A sleeve fixed on the frame telescopically receives a longitudinal rod and the forward end of the rod carries a housing. Bearings in the [74] housing support a transverse shaft carrying a cutter blade and a driven pulley. The pulley is belt driven from an engine on the frame. The rod, housing, shaft, cutter blade and driven pulley can be turned about the rod axis so that the cutter blade can operate vertically or horizontally or at inclined positions, as required. Friction clamp means are provided to maintain the rod in the desired angular position.

## XII.

The invention of the said Patent No. 2,719,398 lies in a very crowded art and therefore the claims in issue must be limited to a very narrow range of equivalents.



XIII.

Claims 6, 7, 8, 9, 10 and 15 in issue require

“\* \* \* wheel means that movably support said engine support and permit angular adjustment thereof relative to a surface on which said wheel means rests, a handle extending upwardly and rearwardly from said engine support that permits guidance and angular adjustment thereof relative to the ground surface, \* \* \*”

Claim 16 in issue requires

“\* \* \* wheel means that movably support said base for angular adjustment thereof relative to the surface on which said wheel means rests, a handle extending upwardly and rearwardly from said base for guiding same; \* \* \*” [75]

Defendants' accused devices employ an arm pivoted on the frame for supporting the front wheel.

Conclusions of Law

I.

Plaintiff Ralph O. Hutchens is the owner of all of the right, title and interest in and to said Patent No. 2,719,398.

II.

This Court has jurisdiction of the subject matter and of the parties to the action.

III.

Defendants have neither severally nor jointly infringed Claims 6, 7, 8, 9, 10, 15 and 16 in issue as

charged by the plaintiff. Said claims cannot be interpreted broadly enough to be infringed by the accused devices without also causing them to read on the prior art machine, defendants Exhibit "B."

### Judgment

In accordance with the foregoing findings and conclusions, it is ordered, adjudged and decreed:

#### I.

That this Court has jurisdiction of the subject matter and of the parties to the action.

#### II.

That plaintiff Ralph O. Hutchens is the owner of the entire right, title and interest in and to Letters Patent No. 2,719,398 granted October 4, 1955, together with all rights of action for infringement thereof.

#### III.

That defendants have neither severally nor jointly infringed said Letters Patent No. 2,719,398 and particularly Claims 6, 7, 8, 9, 10, 15 and 16 in issue.

#### IV.

That the issue of validity of said Letters Patent No. 2,719,398 as raised by the pleadings and the evidence has not [76] been determined by this Court in view of its holding upon the issue of infringement.

V.

That the action is hereby dismissed with defendants having judgment for their costs of action, taxed at \$308.59.

Dated: This 30th day of January, 1956.

/s/ WILLIAM C. MATHES,  
Judge.

Approved as to form.

.....,  
Attorneys for Plaintiff.

LYON & LYON,

/s/ JOHN B. YOUNG,  
Attorneys for Defendants.

Affidavit of Service by Mail attached.

Lodged January 10, 1956.

[Endorsed]: Filed January 30, 1956.

Docketed and entered January 31, 1956. [77]

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[Title of District Court and Cause.]

## NOTICE OF APPEAL

Notice Is Hereby Given that Ralph O. Hutchens, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from

the judgment entered in this action on the 30th day of January, 1956.

Dated: This 29th day of February, 1956, at Long Beach, California.

WILLIAM C. BABCOCK,

FREDERICK E. MUELLER,

By /s/ WILLIAM C. BABCOCK,  
Attorneys for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 1, 1956. [79]

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[Title of District Court and Cause.]

### CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 94, inclusive, contain the original:

Request for Admission of Facts;  
Plaintiff's Interrogatories to Defendants;  
Defendants' Answers to Plaintiff's Interrogatories;

Defendants' Reply to Plaintiff's Request for Admission of Facts;

Plaintiff's Second Interrogatories;

Defendants' Reply to Plaintiff's Second Request for Admission of Facts;

Stipulation and Dismissal as to Patent No. 2,618,919;

Second Amended Complaint (as to Infringement of Letters Patent 2,719,398;

Answer to Second Amended Complaint;

Plaintiff's Motion for New Trial;

Findings of Fact, Conclusions of Law & Judgment;

Notice of Appeal;

Statement of Points on Appeal;

Designation of Contents of Record on Appeal;

Substitution of Attorneys;

Designation of Additional Contents of Record on Appeal;

Stipulation & Order Thereon Extending Time to Docket Record on Appeal.

which, together with certified copy of file wrapper and contents of United States Letters Patent No. 2,618,919, to Ralph O. Hutchens and a Certified copy of file wrapper and contents of United States Letters Patent No. 2,719,398, to Ralph O. Hutchens and the following physical exhibits: Full-sized machine made in accordance with the specification and claims of Hutchens Patent No. 2,618,919, Full-sized machine made in accordance with the specification and claims of Hutchens Patent No. 2,719,398, full-scale model of machine made in accordance with the specification and claims of Boggs

Patent No. 2,538,250, and drawing identified as Exhibit A in the "Stipulation and Dismissal as to Patent No. 2,618,919" that forms a part of the record, and a model of the accused device, all in the above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above case.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of the said District Court this 26th day of April, 1956.

JOHN A. CHILDRESS,  
Clerk.

/s/ CHARLES E. JONES,  
Deputy.



In the United States Court of Appeals  
for the Ninth Circuit

No. 15115

RALPH O. HUTCHENS,

Appellant,

vs.

LOUIS D. FAAS; BERNICE H. FAAS; LEON-  
ARD A. FAAS; GENEVIEVE E. FAAS, Co-  
Partners Doing Business as KING O'LAWN  
MANUFACTURING CO.; WALTER FAAS;  
RUDOLPH FAAS; M. W. ENGLEMAN, As-  
signee for Benefit of Creditors for KING  
O'LAWN MANUFACTURING CO.; KING  
O'LAWN, INC., a California Corporation,

Appellees.

APPELLANT'S STATEMENT OF POINTS

Point I.

The Court erred in not finding that the appellees had jointly and severally infringed Claims 6, 7, 8, 9, 10, 15 and 16 of Patent No. 2,719,398.

Point II.

The Court erred in finding that Claims 6, 7, 8, 9, 10, 15 and 16 of said patent could not be interpreted broadly enough to be infringed by the accused device without also causing them to read on the prior art machine, appellees' Exhibit B.



## Point III.

The Court erred in finding that the claims at issue must be limited to a very narrow range of equivalents.

## Point IV.

The Court erred in finding that appellees' accused devices employ an arm pivoted on the frame for supporting the front wheel, and hence the "wheel means" per se of the accused devices do not permit angular adjustment of the engine support.

## Point V.

The Court erred in finding that the handle embodied in the accused devices does not permit angular adjustment of the engine support, and that such adjustment is accomplished by means of the wheel arm and lever system.

## Point VI.

The Court erred in considering the machine, appellees' Exhibit B, a prior art machine, for the patent application disclosing and claiming same was filed by appellant and was copending in the United States Patent Office together with his patent application from which the patent issued on which this action is based.

## Point VII.

The Court erred in finding no infringement of the claims at issue, when such infringement had

been admitted by appellees in evidence introduced at the trial by appellant without objection by appellees.

Point VIII.

Judgment should be reversed with appropriate instructions for judgment for appellant for an accounting of profits and for damages.

Dated: This 3rd day of May, 1956.

Respectfully submitted,

/s/ WILLIAM C. BABCOCK,  
Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 4, 1956.

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[Title of Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF RECORD

Appellant designates, as the portions of the record upon which he will rely and which he desires printed, the following:

1. Second Amended Complaint.
2. Stipulation and Dismissal as to Patent No. 2,618,919.
3. Answer to Second Amended Complaint.
4. Plaintiff's First Interrogatories to Defendants dated December 1, 1955.

5. Defendants' Answer to Plaintiff's Interrogatories dated December 10, 1955.

6. Plaintiff's Request for Admission of Facts dated December 2, 1955.

7. Defendants' Reply to Plaintiff's Request for Admission of Facts dated December 10, 1955.

8. Plaintiff's Second Interrogatories to Defendants dated December 14, 1955.

9. Defendants' Reply to Plaintiff's Second Request for Admission of Facts.

10. Plaintiff's Motion for New Trial—Rule 50(a).

11. Memorandum in Support of Plaintiff's Motion for New Trial.

12. Findings of Fact, Conclusions of Law, and Judgment.

13. Substitute Notice of Appeal.

14. This Designation.

15. Certified copy of file wrapper and contents of United States Letters Patent No. 2,618,919, to Ralph O. Hutchens.

16. Certified copy of file wrapper and contents of United States Letters Patent No. 2,719,398, to Ralph O. Hutchens.

17. Full-sized machine made in accordance with the specification and claims of Hutchens Patent No. 2,618,919.

18. Full-sized machine made in accordance with the specification and claims of Hutchens Patent No. 2,719,398.

19. Full-scale model of machine made in ac-

cordance with the specification and claims of Boggs Patent No. 2,538,250, and drawing identified as Exhibit A in the "Stipulation and Dismissal as to Patent No. 2,618,919" that forms a part of the record.

20. Model of the accused device.

Dated: This 3rd day of May, 1956.

Respectfully submitted,

/s/ WILLIAM C. BABCOCK,  
Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 4, 1956.

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[Title of Court of Appeals and Cause.]

#### APPELLEES' DESIGNATION OF RECORD

Appellees designate, as the portion of the record upon which they will rely, the following:

1. Defendants' Exhibit B, a physical exhibit. This full-size machine, known as the "Duo Lawn Edger" is referred to in Item 3 of Stipulation and Dismissal as to patent No. 2,618,919, constituting a part of the pleadings herein. This full size machine is at present in custody of appellees. It is appellees' belief that this is the machine referred to in Item 17 of "Appellant's Designation of Record" filed in this Court on or about May 4, 1956.

2. Defendants' Exhibit C, a physical exhibit. This set of charts shows the manner of applying the claims of Hutchens patent No. 2,719,398 in suit to the Duo Lawn Edger, defendants' Exhibit B.

3. Defendants' Exhibit E, a physical exhibit. This is a full size exemplar of the accused device, now in custody of appellees. It is appellees' belief that this is the machine referred to in Item 20 of "Appellant's Designation of Record" filed in this Court on or about May 4, 1956.

4. Defendants' Exhibit H, a physical exhibit. This group of charts relates to the patent claims in suit and to the prior art.

5. Defendants' Exhibit N, a physical exhibit. This is a book of the Prior Art Patents listed in Answer to Second Amended Complaint.

6. Plaintiff's Exhibit 1a, a physical exhibit. This is a group of references cited in file of Hutchens patent 2,719,398, in suit.

7. Plaintiff's Exhibit 2, copy of Hutchens patent No. 2,719,398, in suit.

8. Plaintiff's Exhibit 3, copy of Hutchens patent No. 2,618,919.

9. Plaintiff's Exhibit 4, a physical exhibit. This is a full size machine corresponding to Hutchens patent 2,719,398, in suit. This machine is in custody of appellant. It is appellees' belief that this is the same machine referred to in Item 18 of "Appellant's Designation of Record" filed on or about May 4, 1956.

10. This designation.

Dated this 9th day of May, 1956.

Respectfully submitted,

LYON & LYON,

JOHN B. YOUNG,

By /s/ JOHN B. YOUNG,

Attorneys for Appellees.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 10, 1956.

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[Title of Court of Appeals and Cause.]

### STIPULATION

It is hereby stipulated by and between the parties through their respective counsel that the two Hutchens patents No. 2,719,398 and No. 2,618,919 shall comprise a book of exhibits of which twelve (12) appropriate copies shall be made for use of the Court and counsel.

Dated: May 23, 1956.

LYON & LYON,

Attorneys for Appellees.

Dated: May 24, 1956.

WILLIAM C. BABCOCK,

/s/ WILLIAM C. BABCOCK,

Attorney for Appellant.

[Endorsed]: Filed May 28, 1956.



[Endorsed]: No. 15115. United States Court of Appeals for the Ninth Circuit. Ralph O. Hutchens, Appellant, vs. Louis B. Faas, Leonard Faas, Walter Faas, Rudolph Faas, Individually and as Partners, Doing Business as King O'Lawn Mfg. Co., and King O'Lawn Mfg. Co., a Corporation, Appellees. Transcript of Record. Appeal From the United States District Court for the Southern District of California, Central Division.

Filed: April 27, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.